

regard to the second appellant, but the essence of that resolution insofar as this appellant was concerned was the preparation and submission in his name of plans and drawings for the building which he was not authorised to do. In that regard that report is irrelevant. But the board did consider the report in the second part of its resolution and treated the report as the property of the Ipoh Town Council and therefore did not divulge the contents to the appellants.

The non-disclosure of evidence or, to put it in the language used in *Kanda's* case, the "hearing of evidence from one side behind the back of the other" is contrary to the rules of natural justice. But when it is considered that his Lordship in that case was not enunciating any new principle but merely summarising the principle already well established by a long line of reported cases and when from the facts in *Fernando's* case some evidence was in fact heard behind the back of the accused, it would appear that the rule is not so rigid as it is made out to be. As Lord Jenkins said in *Official Solicitor v. K.*:⁽¹⁰⁾

"It is objected that the use by the court of undisclosed documents or information in wardship cases is objectionable as offending against the fundamental principle of justice to the effect that anyone against whom a charge is made must be given a fair opportunity of knowing and understanding what the charge is and on what evidence it is based. The question whether in a particular case compliance with that principle should be accorded greater or less importance than the probability, whatever it may be, of damage (if any) to the infant ensuing from such compliance, depends on the facts of that particular case; and any attempt to formulate general pronouncements applicable to all cases will be likely to create more difficulties than it solves."

In my view, whether or not there has been a breach of the rules of natural justice by reason that a domestic tribunal has taken into consideration an undisclosed document in coming to a decision would depend on the document itself and the probable damage ensuing from its disclosure. As I read the document, I agree with the board that the disclosure of the document under the circumstances would be unwarranted.

The appeal will therefore be dismissed with costs.

Appeal dismissed.

Solicitors: *R.R. Chelliah Bros.; Skrine & Co.*

CHAI KOR v. PUBLIC PROSECUTOR

[F.C. (Barakbah C.J. (Malaya), Wylie C.J. (Borneo) and Tan Ah Tah F.J.) July 13, 1965]

[K.L. — Federal Court Criminal Appeal No. 24 of 1965]

Criminal Procedure — Trial — Evidence of deaf-mute — Necessity to direct jury on such evidence.

Evidence — Witness — Competency — Witness whose evidence could not be properly understood and to whom proper questions could not be put — Direction

A to jury on such evidence — *Evidence Ordinance, 1950, s. 118.*

In this case one of the principal witnesses against the appellant at the trial was a deaf-mute whose evidence could not be properly understood and to whom proper questions could not be put at all.

B Held: (1) the circumstances concerning the evidence of the deaf-mute in this case demanded that the judge should warn the jury in the strongest terms to consider whether they should or should not accept his evidence and this was a case where the judge would be justified in directing the jury that they could not safely accept his evidence, or further that the evidence should be excluded from their consideration altogether as he was not a competent witness under section 118 of the Evidence Ordinance;

C (2) as the jury had not been properly directed in this case, the appeal must be allowed and the conviction quashed.

Cases referred to:—

(1) *R. v. Attfield* [1961] 1 W.L.R. 1135; [1961] 2 All E.R. 243; 45 Cr. App. R. 309, 312.

(2) *R. v. Imrie* 12 Cr. App. R. 282.

D FEDERAL COURT.

Dato' David Marshall (S. A. Raj with him) for the appellant.

B. T. H. Lee (Deputy Public Prosecutor) for the respondent.

E *Wylie C.J. (Borneo)* (delivering oral judgment): This appellant who has been convicted of murder was originally charged with another accused whom the jury acquitted at the end of the case for the prosecution.

The prosecution case so far as concerns the two accused, really depended on the evidence of two witnesses only. One was Krishnasamy s/o Kandiah and his evidence was to the effect that he had seen both the accused assaulting the deceased with instruments that could have been daggers. Having seen that, he himself said that he went home, had his meal and went to bed. He said that he told no one about this incident until 20 days later when, as a result of an approach from the police, he himself went to the police. He said that he was very friendly with the police; he even helped them with their garden. It can only be described as very extraordinary conduct for a man in that position to keep the story to himself and not speak about it to his friends the police during the whole of that 20 days.

There are also other features in his evidence which lead to the conclusion that his evidence should be treated with caution. At the close of the case for the prosecution the jury found the first accused not guilty. That has an important bearing with regard to the evidence of this witness. For his evidence to the effect that No. 1 accused was one of the persons attacking the deceased was at variance with the evidence of the other eye-witness. The other eye-witness saw only one attacker and it was assumed by the judge, and rightly so it seems, that, by acquitting

No. 1 accused, the jury was taking the view that Krishnasamy was not a reliable witness and that therefore they were not prepared to accept his uncorroborated testimony in regard to accused No. 1.

However, the appellant was called on for his defence and the important difference in the evidence as against the 2nd accused was that there was another eye-witness. That eye-witness identified the appellant, and the appellant only, as being engaged in this attack. Consequently, the judge assumed, and again it would seem to be a reasonable assumption, that the jury up to that stage was taking the view that the evidence of Krishnasamy was, in regard to the case against the appellant, corroborated by the other eye-witness who was Mohd. bin Yeop Musa. Consequently the evidence of that witness becomes all important in the case against the appellant. Now that witness' evidence is for very different reasons, even more extraordinary than that of Krishnasamy. For he was a deaf-mute. It is clear from the record that the person who was ultimately engaged as an interpreter had difficulty in communicating with him and possibly, the record indicates, incorrectly interpreted his answers. For, at one stage he was interpreting the witness' evidence as saying that he (the witness) had been stabbed by the appellant, and later it was necessary for the witness to correct that. More important still, when it came to cross-examining this witness, the interpreter had to say that some of the questions which it was desired to put, just could not be put on to him.

Without going into his evidence in any greater detail, it is obvious that, in the case against the appellant, these circumstances were probably the most important aspect of the evidence against him. For the jury had apparently already arrived at the conclusion, with good reason in my opinion, for looking doubtfully at Krishnasamy's evidence. Consequently this witness' condition is one of those features which the court had in mind in *Attfield's* ⁽¹⁾ case when they safeguarded themselves by saying that nothing that the court was saying then, was intended to put forward the suggestion that a judge is entitled to refrain from discussing the evidence, if the circumstances of the case and the conduct of the trial demand that he should. The circumstances concerning the deaf-mute demanded, as strongly as could be demanded, that the judge should warn the jury in the strongest terms to consider whether they should, or should not, accept his evidence. Strictly speaking, the question had to be left to the jury. It was a question of fact for them. But, speaking for myself, I feel that this is a case where the judge would be justified in putting to the jury that they could not safely accept his evidence.

A So much for the question of the state of evidence and the directions which ought to have been given on it. But this is also a case to which the decision in *Imrie's* ⁽²⁾ case would apply. Here is a witness whose evidence could not be properly understood and to whom proper questions could not be put at all. Therefore it is a case where the jury might well have been directed that this evidence was to be excluded from their consideration altogether. From the record, it is difficult to see, when those features arose how the court could continue to take the view that this witness was a competent witness within the meaning of section 118 of the Evidence Ordinance.

B It follows therefore, that, had this jury been properly directed, or had the court taken either of these two points with regard to the evidence of the deaf-mute, no jury could have arrived at the conclusion that Krishnasamy's evidence was satisfactorily corroborated in regard to what he said about this appellant. On either grounds, that is, on the lack of full direction on this aspect, or on the ground that this witness should not have been giving evidence or that his evidence should have been withdrawn from the jury, — on either of these grounds this appeal must succeed. The appeal is allowed, the conviction is quashed and the sentence set aside.

Appeal allowed.

F **AMALGAMATED UNION OF PUBLIC
EMPLOYEES v. PERMANENT
SECRETARY (HEALTH)
& ANOR.**

[O.C.J. (Winslow J.) July 21, 1965]

[Singapore — Originating Motion No. 9 of 1965]

G *Administrative Law — Remedies — Prohibition — Committee of inquiry appointed under Public Service (Disciplinary Proceedings) (Procedure) Rules, 1964 — Whether committee performing a judicial or quasi-judicial function — Whether holding of inquiry contravened Industrial Relations Ordinance, 1960, s. 77 — Legal rights of civil servants — Federal Constitution, Arts. 132 and 135.*

H *Constitutional Law — Civil servants — Legal rights of.*

Industrial relations — Public servants who are members of a trade union — Observations on — Industrial Relations Ordinance, 1960, s. 77.

Trade Union — Civil servants — Pursuit of trade union activities.

I This was an application for an order of prohibition to prohibit the chairman of the committee of inquiry from proceeding with an inquiry which has been instituted at the instance of the Public Service Commission with a view to the dismissal of a public officer, who was an official of the appellant union. The main ground relied on was that section 77 of Industrial Relations Ordinance, 1960, would be contravened if the inquiry was held.